



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,110	02/27/2002	Wilfried Jud	ATM-2215	4881

7590 06/18/2004

Fisher Christen & Sabol
Suite 1108
1725 K Street NW
Washington, DC 20006

EXAMINER

JACKSON, MONIQUE R

ART UNIT	PAPER NUMBER
----------	--------------

1773

DATE MAILED: 06/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/083,110

Applicant(s)

JUD ET AL.

Examiner

Monique R Jackson

Art Unit

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☒ Certified copies of the priority documents have been received in Application No. 09/457,006.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. The amendment filed 3/29/04 has been entered. Claims 30-48 are pending in the application.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

3. Claims 30, 34 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Migliorini et al for the reasons recited in paragraph 3 of the prior office action.
4. Claims 30, 34 and 38-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Breitler et al for the reasons recited in paragraph 4 of the prior office action.

Claim Rejections - 35 USC § 103

5. Claims 39-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Migliorini et al in view of Breitler et al for the reasons recited in paragraph 5 of the prior office action.
6. Claims 30-38 and 43-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohtsuki et al for the reasons recited in paragraph 6 of the prior office action.
7. Claims 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohtsuki et al in view of Breitler et al for the reasons recited in paragraph 7 of the prior office action.
8. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohtsuki et al in view of Abrams for the reasons recited in paragraph 8 of the prior office action.

Response to Arguments

9. Applicant's arguments filed 3/29/04 have been fully considered but they are not persuasive. With respect to Migliorini, the Applicant continues to argue that Migliorini does not

Art Unit: 1773

teach a composite containing a coextruded film of polyamide/polypropylene extrudate only as instantly claimed given the “consisting of” claim language. However, as stated previously, the instantly claimed invention as a whole does not exclude additional layers and given that Migliorini clearly teaches a composite wherein a polyamide layer is adjacent a polypropylene layer formed by coextrusion, the Examiner maintains that Migliorini anticipates the claimed invention. Further, it is noted that the current claim amendments do not seem to overcome the teachings of Migliorini with respect to the polyamide layer in connection to the metal foil layer considering the amendment recites that an intermediate layer may be provided between the two. With respect to Breitler et al, the Applicant first argues that Breitler et al does not disclose any member of Applicant’s first functional layer and continues to argue that the Examiner has improperly interpreted the teachings of Breitler et al. In response, the Examiner first notes that the first functional layer as instantly claimed includes the broad member of lacquer layers wherein any polymer layer could read upon this term. Further, the Examiner maintains her position as stated in the prior office actions that Breitler et al clearly teach a polypropylene layer between the polyamide layer(s) and the metal foil. In terms of the obviousness rejection over Migliorini in view of Breitler et al, the Applicant argues that the Examiner’s attempt to show motivation fails because Migliorini allegedly teaches away from the instant invention by showing improvements in using a metallized layer in place of a metal foil, however, though Migliorini teaches improvements based on particular desired characteristics of the final film, Migliorini clearly provides a suggestion that a metallized layer and a metal foil are both utilized for the same purpose in packaging films, namely barrier properties, and hence the Examiner maintains that one skilled in the art at the time of the invention would have been motivated to

Art Unit: 1773

utilize a metallized layer or a metal foil layer, both of which are known to provide barrier properties and hence are functional equivalents in the art. With respect to the rejections over Ohtsuki et al, the Applicant argues that Ohtsuki et al do not recognize the problem that the instant invention solves, do not teach that the coextruded layers have a bond sufficient to preventing delamination during sterilization, and provides a generic teaching of various components of the instant invention such that a broad number of possible arrangements are suggested with no direction to select Applicant's combination. However, the Examiner notes that though Ohtsuki et al clearly teach that the resulting composite may be subjected to sterilization and utilized in producing sterilized packaging film, hence, though Ohtsuki et al do not explicitly recite that the two coextruded layer do not delaminate, given that Ohtsuki et al clearly teach subjecting the film to sterilization resulting in a composite that does not delaminate and is suitable for sterilized packaging, the Examiner takes the position that Ohtsuki et al do suggest that the coextruded layers can be subjected to sterilization and do not delaminate. Further, the Examiner takes the position that though Ohtsuki et al provides a generic teaching of the invention and lists various materials that can be utilized, the list of materials is small enough that one skilled in the art would be directed to Applicant's invention given the suggestion of Ohtsuki et al to utilize the materials of the instantly claimed invention given the reasonable expectation of success.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

Art Unit: 1773

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R Jackson whose telephone number is 571-272-1508. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul J Thibodeau can be reached on 571-272-1516. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Monique R. Jackson
Primary Examiner
Technology Center 1700
June 14, 2004